

REMARKS

Applicant unknowingly submitted an improper Request for Continued Examination on December 3, 2007, in the above-referenced application and, as noted in the Petition to Revive filed concurrently herewith, erred in not properly responding to such a notice timely, thereby leading to the Notice of Abandonment mailed on July 14, 2008. Applicant has now had the chance to have his representative review the entire application and the circumstances involved with this RCE issue. Herewith is his full response which Applicant respectfully requests inclusion thereof with the previous filed, yet deemed improperly submitted, RCE. As the RCE fee has already been paid, it is respectfully submitted that no further fees are owed to effectuate the RCE consideration.

Claims 1-2 and 4-5 are currently pending. Claim 3 has been canceled, and Claims 6-20 have been canceled for filing within one or more divisional applications. Claim 1 has been amended to reflect the size of the primary aggregates present on the claimed vaterite calcium carbonate are from 1 to 2 microns in size, as presented at line 24 on page 4 (within paragraph 24) of the originally filed specification. No claims have been added. No new matter has been introduced. Entry and due consideration of such an amendment are therefore earnestly solicited.

The Office has rejected Claims 1-3 under 35 U.S.C. § 102(b) as being anticipated by Minayoshi et al., as well as Claims 1-5 under the same statute, or alternatively as obvious under 35 U.S.C. §103(a) over the same reference. The crux of the Office's position appears to reside in patentees' alleged disclosure of vaterite having the claimed particle size. Previously, the claims were written in such a way that the size of aggregates could have been 0 microns, admittedly.

However, Applicant has now amended his claims to reflect the aggregate size being between 1 and 2 microns. As such, the vaterite materials of Minayoshi et al. specifically do not exhibit the same characteristics in composition and size as now claimed. Such a specific aggregate size range is necessary to impart the desired abrasive properties noted within the specification that such an inventive vaterite calcium carbonate exhibits for dental cleaning benefits. As Minayoshi et al. are silent as to any abrasion properties, not to mention specifically state that aggregation is avoided in order to permit proper surface characteristics of their calcium carbonate materials to allow for proper dispersions made therefrom, it is evident that anticipation over the pending claims is nonexistent for this reference. Furthermore, it is evident that as patentees are limited in their teachings to vaterite compounds that expressly do not exhibit any aggregation at all, it would not be within the purview of the ordinarily skilled artisan to modify Minayoshi et al.'s vaterite compounds to include aggregate sizes at all, let alone within the claimed range. Furthermore, as the abrasion properties now claimed are reliant upon the presence of such specifically sized aggregates on the claimed vaterite materials, the statement that the same abrasion resistance characteristics as now claimed are met by the teachings of Minayoshi et al. is not well taken; to the contrary, the fact that dispersion improvements alone are the basis of patentees' disclosure shows that the teachings of the cited prior art reference are divergent from the requirements of the presently claimed invention. The Office's position that Minayoshi et al.'s microphotographs show agglomeration of particles is not well taken; the photographs have to be viewed in light of the teachings of the specification itself. As the clear basis of patentees' disclosure is to a vaterite that expressly exhibits no aggregation, that has to be the position the

artisan reviewing such a reference must take as well. Furthermore, even upon further review of the photographs themselves, there is no clear depiction of any agglomeration or aggregation of particles anyway. The presence of many small particles in close proximity to one another does not rise to the level of agglomeration or aggregation. The photographs thus appear to depict a large number of small particles in that respect. Viewed in tandem with the disclosure of patentees', the conclusion must be that the overall dispersion improvement directive is met by these non-aggregating, smooth spherical particles. As such, the Office's position appears to strain the express teachings of Minayoshi et al. through improper hindsight reconstruction of the presently claimed invention. Again, as the pending claims now require a specific range of aggregate sizes for the specific vaterite materials, and since Minayoshi et al. specifically teach a divergent result, not to mention the photographs supplied by patentees fail to show agglomeration or aggregation, only large numbers of particles in close proximity to one another, the basis of rejection posited by the Office is thus improper. Reconsideration and withdrawal are therefore respectfully requested of this rejection.

The Office has also rejected Claims 1-3 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6, 10 and 11 of U.S. Patent No. 6,989,142. In view of the amendments above, this rejection is moot. The aggregate size range is currently 1-2 microns; the patent range is 3-10 microns. No overlap is present. Thus, there is no double patenting present. Furthermore, in the patent, the necessity of such a range is discussed and critical; no reason exists to modify to a smaller size is suggested or contemplated. The 1-2 micron range is specifically shown to be necessary to impart the needed abrasive qualities to the

currently claimed vaterite materials as well. The existence of such critical selection criteria for these separate ranges removes any possibility for obviousness in this situation. As such, withdrawal of this rejection is requested, and the Terminal Disclaimer submitted previously, but considered part of an improper submission with an RCE, is withdrawn as well.

CONCLUSION

In view of the amendments and remarks supplied above, it is respectfully submitted that the present claims of this application are now in condition for allowance and that this case be passed on to issue without further delay.

Respectfully submitted,

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